

EXHIBIT 1

In The Matter Of:

BLUE SPIKE, LLC

v.

AUDIBLE MAGIC CORPORATION

YANNIS PAPAKONSTANTINOU, PH.D. - Vol. 1

July 8, 2015

***HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL EYES ONLY***



Court Reporting Solutions

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BLUE SPIKE, LLC)	
)	
Plaintiff)	
)	Case No.
v.)	6:15-cv-584-RWS-CMC
)	
AUDIBLE MAGIC CORPORATION)	
)	
Defendants.)	

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VIDEOTAPED DEPOSITION OF:

YANNIS PAPAKONSTANTINOU, PH.D.

WEDNESDAY, JULY 8, 2015

9:15 A.M.

Reported by: PAULA A. PYBURN

CSR 7304, RPR, CLR (SF-043371)

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1 Videotaped deposition OF YANNIS
2 PAPAKONSTANTINOU, PH.D., the witness, taken on
3 behalf of DEFENDANTS, on Wednesday, July 8, 2015,
4 9:15 a.m., at 9191 Towne Centre Drive, 6th Floor,
5 San Diego, California, before PAULA A. PYBURN,
6 CSR 7304, RPR, CLR.

7

8

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21

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I N D E X

WITNESS	EXAMINATION	PAGE
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E X H I B I T S

NO.	PAGE	DESCRIPTION
Exhibit 101	9	Technical Expert Report of Yannis Papakonstantinou, Ph.D.
Exhibit 102	18	Exhibit B. List of Materials Considered
Exhibit 103	40	Claim Construction Order of Blue Spike Patents
Exhibit 104	49	U.S. Patent 7,346,472
Exhibit 105	50	U.S. Patent 7,660,700
Exhibit 106	50	U.S. Patent 8,214,175
Exhibit 107	50	U.S. Patent 7,949,494
Exhibit 108	98	Excerpts from Deposition of Dr. Erling Wold

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1 UNANSWERED QUESTIONS

2 (None)

3

4

5 INFORMATION REQUESTED

6 (None)

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1	And, as you actually said it pretty well,	11:38:34
2	it finds -- it is -- it is going after similarity.	11:38:37
3	And that similarity and -- and using data	11:38:42
4	structures. So it has data structures that	11:38:49
5	facilitate -- facilitate finding similar, and then	11:38:52
6	it has algorithms that facilitate finding similar.	11:38:58
7	In contrast, the '223 -- sorry.	11:39:03
8	In contrast, the patents in suit all in	11:39:06
9	some way talk about an abstract that is a very	11:39:11
10	particular data structure. It is a data-reduced	11:39:17
11	representation that is made to differentiate.	11:39:22
12	Right?	11:39:24
13	So when you differentiate, when you know	11:39:24
14	what is different, you also know what is the same.	11:39:26
15	Okay?	11:39:29
16	And -- and, consequently, by utilizing	11:39:30
17	this, it talks about systems that, by knowing that	11:39:37
18	this is how the abstract was made, in some	11:39:41
19	applications and in some of the inventions --	11:39:46
20	definitely not all of the inventions -- they utilize	11:39:48
21	this property to find the intended match when there	11:39:50
22	is -- in the applications where an intended match is	11:39:56
23	what is clearly needed.	11:39:58
24	Q So is it your opinion that the '223 patent	11:39:59
25	technology does not carry out matching as construed	11:40:02

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1 by the Court? And by that I mean share selected 11:40:05
2 criteria. 11:40:08

3 A I -- again, I will take the entirety of 11:40:10
4 the -- of the -- of the invention that I'm talking 11:40:15
5 about here. It is -- this is a data structure that 11:40:23
6 is meant to differentiate. Right? And using this 11:40:27
7 data structure that is meant to differentiate will 11:40:31
8 do matching -- well, the patents in suit describe 11:40:35
9 doing matching. 11:40:38

10 In that sense, you have got now another 11:40:41
11 system that is basically using another data 11:40:49
12 structure that is talking similarity. And -- and it 11:40:51
13 explains pretty well, the '223 patent, what data it 11:40:59
14 can accumulate to create similarity, and, 11:41:05
15 consequently, an -- an algorithm, algorithms that 11:41:09
16 basically compare whether it is -- whether it is 11:41:13
17 similar. 11:41:18

18 Q Well, I'm still not clear. 11:41:20

19 Is it your opinion that the '223 patent 11:41:22
20 technology does not carry out matching as construed 11:41:24
21 by the Court? And by that I mean, quote, share 11:41:26
22 selected criteria. 11:41:30

23 A So, again, I see this -- the way I see 11:41:32
24 things is basically by looking at the invention, 11:41:38
25 start to end -- the invention, start to end -- and 11:41:47

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1 the claims of this invention. And -- and what is 11:41:50
2 the data structures, that is where the computer 11:41:54
3 scientist comes in -- where are the data structures? 11:41:57
4 Where is the algorithms? 11:41:59

5 And I think a lot of the discussion here is 11:42:01
6 basically at the point that we are, from one side to 11:42:06
7 the other, isolating either the data structure from 11:42:11
8 the algorithm. So here we have flipped now and we 11:42:14
9 are discussing -- talking algorithms without the 11:42:18
10 context that the data structure provides. 11:42:25

11 Q Okay. So I just want to make sure I 11:42:28
12 understand. 11:42:30

13 It sounds to me like you're comparing the 11:42:30
14 Muscle Fish prior art, all the prior art, to the 11:42:33
15 Blue Spike patents as a whole, sort of the 11:42:36
16 overarching invention, including the specification 11:42:38
17 and the claim? 11:42:40

18 A Yeah. So there's -- 11:42:41

19 MR. GARTEISER: Objection. Form. 11:42:42

20 THE WITNESS: So there's multiple 11:42:43
21 inventions. Okay? And, of course, I have looked at 11:42:45
22 each one of them individually. 11:42:49

23 And for each one of them, yes, there is 11:42:51
24 terms that you are using "the abstract," the -- "the 11:42:56
25 match," the term being used in the claims, they are 11:43:00

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1 being used in the specification. But when it comes 11:43:04
2 to the -- to the -- to the claims, these -- these 11:43:06
3 terms obtain their meaning there, and -- and -- 11:43:13
4 and -- and I see these as -- in the context of the 11:43:21
5 invention. 11:43:27

6 BY MR. RAMSEY: 11:43:27

7 Q What do you mean, "The terms obtain their 11:43:27
8 meaning there"? I don't understand that. 11:43:30

9 A So the -- I believe that the terms have 11:43:32
10 been construed, and the ones that have not been 11:43:34
11 construed are left to us to -- to understand, in the 11:43:42
12 context of the particular invention. And that's how 11:43:46
13 I am reading -- I'm reading terms. 11:43:52

14 Q Okay. But -- 11:43:57

15 A And that's why I understand that -- that -- 11:43:58
16 that you -- the counsels and the judge went after 11:44:01
17 the construction. 11:44:07

18 Q Okay. So -- but it sounds to me like you 11:44:08
19 just said that you're comparing the prior art 11:44:13
20 systems and publications to the Blue Spike patents 11:44:16
21 as a whole, including the specification. 11:44:18

22 A I didn't say this. 11:44:21

23 MR. GARTEISER: Objection. Form. 11:44:22

24 THE WITNESS: That, actually, you said 11:44:23
25 yourself just now. 11:44:24

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1 BY MR. RAMSEY:

11:44:25

2 Q Okay. So -- so you're comparing the Muscle
3 Fish prior art systems to the claims as construed by
4 the Court; is that right?

11:44:25

11:44:28

11:44:30

5 A I have compared the -- the '223, the Muscle
6 Fish, to the inventions.

11:44:32

11:44:38

7 Q So how do you know that the Muscle Fish
8 '223 patent's technology does not return an intended
9 match?

11:44:41

11:44:46

11:44:52

10 A Yeah. Yeah. Yeah.

11:44:52

11 Q How do you know that?

11:44:53

12 A Yeah. So this is what we discussed. That
13 this -- as we said, the -- the '223 patent, and the
14 Muscle Fish that embodies the '223 patent, is a
15 system that is made to return similar signals -- I
16 guess similar sounds.

11:44:54

11:44:57

11:45:03

11:45:08

11:45:16

17 And here the patents in suit talk about a
18 system that is creating abstracts, which is a
19 particular data-reduced data structure, with the
20 explicit purpose of differentiating between signals.

11:45:19

11:45:26

11:45:31

11:45:38

21 And in that case, when we talk sounds,
22 yeah, sounds are a kind of signal. So it is made to
23 differentiate.

11:45:43

11:45:47

11:45:51

24 When you are -- when you make something to
25 differentiate, you also make -- you know, you -- you

11:45:51

11:45:53